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FEDERAL BUREAU OF INVESTIGATION

Form No. 1
THIS CASE ORIGINATED AT

HOUSTON

FILE NO. 120-38

REPORT MADE AT HOUSTON, TEXAS	DATE WHEN MADE 7-3-48	PERIOD FOR WHICH MADE 7-3-48	REPORT MADE BY WILLARD BOONE ep
TITLE PAN AMERICAN REFINING CORPORATION -vs- UNITED STATES Civil Action No. 681, United States District Court, Southern District of Texas		CHARACTER OF CASE FEDERAL TORT CLAIMS ACT	
<p>SYNOPSIS OF FACTS:</p> <p>1-CC-D/R 1-2-117</p> <p>Civil suit filed 4-1-48 in United States District Court, Southern District of Texas, against the United States by Plaintiff, a corporation, in its own behalf and as trustee for its <u>cestui que trust</u> insurers, Atlas Assurance Company, Ltd., and Hartford Fire Insurance Company, for property damage and loss of profits in the amount of \$1,370,000.00 arising out of damage to its refining installations and inventories at Texas City, Texas during the fires and explosions at Texas City on 4-16, 17-47. Plaintiff's petition alleges thirty-three acts of negligence, omissions, or wilful acts on the part of Defendant's agents, officers, employees and servants in manufacturing and causing to be shipped through the Port of Texas City Fertilizer Grade Ammonium Nitrate which is claimed to be the material which exploded. Petition further requests the Court to apply the rule of <u>res ipsa loquitur</u> or in the alternative to find that the Defendant wilfully and knowingly caused to be placed in proximity of Plaintiffs' property dangerous material with explosive characteristics, with knowledge of such characteristics or reason to have such knowledge with exercise of due diligence. Government's answer filed 6-3-48 containing motions to dismiss, general and specific denials, and alleging intervening acts of negligence by other parties were the proximate cause of Plaintiffs' damages.</p>			
APPROVED AND FORWARDED		SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES 121-2
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DETAILS:

This investigation is predicated upon a letter from the Honorable BRIAN S. ODEM, United States Attorney for the Southern District of Texas, Houston, Texas, dated January 30, 1948, requesting that an investigation be conducted as to the civil suits filed against the United States Government arising out of the Texas City Disaster which occurred on April 16, 17, 1947.

INTRODUCTION

As set forth in the report of Special Agent JAMES A. FINLEY, dated April 24, 1948 at Houston, Texas in case entitled THE TEXAS CITY TERMINAL RAILWAY COMPANY -vs- UNITED STATES, CIVIL DOCKET #CA-535, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, FEDERAL TORT CLAIMS ACT, at 9:12 A.M. on April 16, 1947, the SS Grandcamp, a vessel of French registry, which was moored at Pier "O" at Texas City, Texas, exploded causing widespread destruction and loss of life. This vessel was being loaded with Fertilizer Grade Ammonium Nitrate (hereinafter referred to as FGAN) and at the time of the explosion approximately 2,300 tons of FGAN had been loaded into Holds Two and Four. It is this material which allegedly exploded at Texas City.

At approximately 8:00 A.M. on April 16, 1947, nineteen longshoremen boarded the SS Grandcamp and opened the hatches at which time no fire was noted. About ten minutes later, smoke was discovered in the No. Four deep hold. Efforts were made by the longshoremen to extinguish the fire with jugs of drinking water without success and the longshoremen called for a fire hose to be lowered into the hold. This was done but before water was applied to the blaze, orders were issued to remove the hose, batten the hatches, and apply steam to the hold in an attempt to smother the blaze and avoid cargo damage. The longshoremen were ordered off the ship and the Texas City Fire Department was summoned for the purpose of extinguishing the fire. The fire steadily increased in intensity and, as mentioned above, the ship exploded at approximately 9:12 A.M. on April 16, 1947.

The SS High Flyer, a vessel of American registry owned by Lykes Brothers Steamship Company, was also moored in the immediate vicinity, and this ship contained a cargo of approximately 960 tons of FGAN in Hold No. 3. Other materials, including sulphur, were also loaded aboard the SS High Flyer. After the explosion of the SS Grandcamp, which blew away the hatch covers of the SS High Flyer, no fire was observed aboard the latter ship for several hours. The SS High Flyer exploded at approximately 1:10 A.M. on April 17, 1947 with little loss of life but great property damage.

Investigation has shown that the FGAN involved at Texas City was manufactured at United States Government facilities of the Nebraska Ordnance Plant, Fremont, Nebraska; Cornhusker Ordnance Plant, Grand Island, Nebraska; and Iowa Ordnance Plant, Burlington, Iowa, all operated by the Emergency Export Corporation, a subsidiary of the Spencer Chemical Company, Kansas City, Missouri, on a cost-plus contract with the United States Government. The FGAN was being manufactured for the Government which sold it to Lion Oil Company, Eldorado, Arkansas, in accordance with the provisions of a replacement contract entered into in July, 1946. Shipment of the material was on Government Bills of Lading from the respective Ordnance Plants to Texas City. A sales contract existed between the Lion Oil Company and the Walsen Consolidated Mercantile Company, New York City, through which the latter company sought to acquire title to the FGAN on behalf of the French Supply Council. Technical examinations of control samples of the FGAN involved in the explosion at Texas City have shown that the material conformed to specifications with very minor deviations.

INITIAL LEGAL PROCEEDINGS

The records of the United States District Court Clerk's Office, Galveston, Texas, reflect that on April 1, 1948, Civil Action No. 681 was filed in United States District Court, Southern District of Texas, against the United States by the Pan American Refining Corporation, through its attorneys, AUSTIN Y. BRYAN, JR., and DAVID BLAID, Houston, Texas, for property damages and loss of profits totaling \$1,370,000.00 as a result of damage to Plaintiff's refining properties at Texas City, Texas during the fires and explosions at Texas City on April 16, 17, 1947. The original suit asked damages of \$1,330,000.00 but the petition was later amended to include an additional sum of \$40,000.00 for destruction of inventories. The Plaintiff's First Amended Complaint supersedes in its entirety the original complaint and it is the former petition which is being summarized herein. The petition sets forth that this action is brought under the Federal Tort Claims Act, 28 USCA 921, and that Plaintiff is suing in its own behalf and as trustee for its pledgees and cestui que trust insurers, Atlas Assurance Company, Ltd., and Hartford Fire Insurance Company. For convenience, the Pan American Refining Corporation is being designated by the term "Plaintiffs".

1. Summary of Plaintiffs' Petition:

The Plaintiffs' First Amended Complaint is summarized briefly by paragraphs as follows:

Paragraph I. The Pan American Refining Corporation is a corporation duly organized and existing under the laws of the State of Delaware with a permit to do business in the State of Texas; having its principal office and place of business at Texas City, Texas. On and prior to April 16, 1947, Plaintiffs were owners of a large oil, gasoline and by-products refinery; together with other equipment and machinery usual and customary to an oil and gasoline plant.

Paragraph II. Plaintiffs charge that a large and multiple number of Defendant's negligent acts and omissions and wrongful acts occurred singly, jointly and in sequence within the Galveston Division of the Southern District of Texas, and Plaintiffs bring this action under the Federal Tort Claims Act, 28 USCA 921 in this district because of the Court's jurisdiction.

Paragraph III. Plaintiffs charge as a proximate result of an explosion on the SS Grandcamp on April 16, 1947 and subsequent fires and explosions, Plaintiffs' property was generally damaged or destroyed to the extent set forth on the schedule.

Paragraph IV. Plaintiffs allege the fire and explosion originated in a cargo of explosive and dangerous materials being loaded on the SS Grandcamp, namely, ammonium nitrate.

Paragraph V. Plaintiffs assert this material on the SS Grandcamp, in warehouses at Texas City and in adjacent boxcars, was a highly dangerous and inherently dangerous explosive manufactured by the Defendant, its agents, servants, representatives, and employees at the Cornhusker Ordnance Plant, Nebraska Ordnance Plant, and Iowa Ordnance Plant. Plaintiffs assert the manufacture, processing, testing, preparing, sacking and shipping of the ammonium nitrate was in the direct, sole and exclusive control of Defendant; and that Defendant was negligent in each and all of the operations are unable to allege with particularity those negligent acts and omissions of which the Defendant is guilty. Plaintiffs allege that failure of the Defendant to adopt methods, etc., such as a reasonably prudent man would have adopted proximately caused the Plaintiffs' damages. By reason thereof, Plaintiffs state that the rule of seis ipsa loquitur should be applied.

Paragraph VI. Plaintiffs, in the alternative to Paragraph V., charge Defendant with the manufacture, storage, processing assembling, sacking, and shipping of ammonium nitrate and additional elements added thereto, resulting in the ammonium nitrate shipped to Texas City becoming a highly dangerous explosive

and instrumentality and material, the characteristics of which Defendant knew or should have known by exercise of due diligence to be inherently dangerous to people dealing with same. Because of this, Plaintiffs charge Defendant is absolutely liable to Plaintiffs for all their damages. Plaintiffs charge this material was placed by Defendant in proximity of Plaintiffs' property knowingly and wilfully by Defendant, its agents, servants, etc. Plaintiffs contend that the explosions and fire at Texas City were of such magnitude as to amount to a national disaster worthy of judicial notice.

Paragraph VII. Plaintiffs notify Defendant they will not be confined to specific acts of negligence hereinafter alternatively charge, but expect to rely also on the general allegations of fire, explosion, negligence, defectiveness and neglect as well as res ipsa loquitur.

Paragraph VIII. Plaintiffs allege their damages proximately flowed from and were caused by the negligent and wrongful acts and omissions of Defendant as follows:

1. Manufacturing under the direction of the Commanding Officer of the U. S. Army Ordnance Department and his superiors and subordinates, etc., excess military liquid ammonium nitrate into so-called commercial fertilizer by graining such liquid ammonium nitrate and introducing a wax of petroleum, rosin, and paraffin, and an inert material known as kaolin, resulting in a highly combustible, unstable explosive and inherently dangerous material. Plaintiffs charge Defendants with knowledge such material would be handled by persons not informed of the nature of the material.
2. Defendant, its agents, etc., shipped via common carrier this material with knowledge that it would be handled by uninformed persons, and that Defendant knew or should have known by the exercise of due care that ammonium nitrate grained from surplus military supplies was inherently dangerous.
3. Wilfully and knowingly introducing into the proximity of people and property this dangerous commodity without having tested and determined the inherently dangerous characteristics such as a reasonably prudent operator would have done.

4. Knowingly and wilfully selecting Texas City, Texas as an export point, knowing of the presence of concentrated industrial facilities.
5. Failure to give notice as to the nature of the dangerous material to persons handling same, as well as special instructions as to the most approved method of controlling fires and explosions.
6. Failure to post special guards to supervise loading and unloading.
7. Failure to post guards and other persons who understood fire control methods as to ammonium nitrate.
8. Failure to promulgate regulations isolating points of export from heavily developed commercial areas.
9. Failure to post watchmen and guards to control loading and unloading of ammonium nitrate from boxcars to warehouses to ships on April 16,17, 1947.
10. Failure to have a tug available to move ships in event of fire or explosion.
11. Failure to take steps as a reasonably prudent shipper to determine that docks and ships were equipped with necessary knowledge and firefighting equipment to meet all possibilities.
12. Creating a common nuisance by shipping an inherently dangerous material into Texas City.
13. Knowingly and wilfully making shipments of ammonium nitrate to Texas City without first determining that adequate knowledge and equipment for fire control, etc., were available.
14. Failing to exercise the degree of care commensurate with the risk and danger naturally expected to arise in shipping ammonium nitrate to Texas City.
15. Wilfully mislabeling as "Fertilizer".
16. Failure to issue specific instructions in event of fire or explosion within the area or the material itself.

17. Bagging FGAN at temperatures not less than 200° F. in paper bags laminated with asphalt, itself a highly combustible material.
18. Packaging ammonium nitrate in paper bags with asphalt laminated layers which in common knowledge permitted increased combustion and explosibility.
19. Failing through research division of the U. S. Government to determine by reasonable diligence the inherently dangerous characteristics of ammonium nitrate grained into fertilizer.
20. Failing to act as a reasonably prudent operator would have done through the Interstate Commerce Commission in being advised of advances of science respecting proper methods of packaging and labeling ammonium nitrate.
21. Failure to give warning of the explosive nature of ammonium nitrate to persons handling same or in vicinity thereof, including Plaintiffs.
22. Ordering, directing, permitting, and acquiescing in the large concentration of approximately 2,300 tons of ammonium nitrate at Texas City.
23. Knowingly, purposely, and wilfully through the Ordnance Department shipping via common carrier the ammonium nitrate at Texas City, knowing such material was explosive and dangerous, and yet so delivering such material under false and deceptive markings and falsely giving an invoice and shipping order without informing as to the true character of the material prior to delivery to the common carriers in violation of Title 18, Sec. 385, USCA.
24. Knowingly tendering through the Ordnance Department under Government Bill of Lading for shipment by rail a dangerous material described as fertilizer in violation of Section 417 of Interstate Commerce Commission regulations.
25. Knowingly violating Sec. 146.05 (a) (b) (c) of U. S. Coast Guard regulations on "Explosives and Other Dangerous Articles on Board Vessels" by tendering such ammonium nitrate for shipment with knowledge it was to be exported on ships at Texas City without ascertaining the ships had been notified of the characteristics of the shipment.

26. Knowingly continuing a dangerous and obsolete manufacturing process which had been abandoned by foreign manufacturers.
27. Wilfully continuing to use asphalt laminated paper bags to package this dangerous material after foreign manufacturers had abandoned this method in favor of metal or wooden barrels.
28. Permitting loading of SS High Flyer with ammonium nitrate, knowing this vessel could not be moved under its own power, and by so loading and causing the ammonium nitrate to be confined in the hold of said ship, tending to speed up and enlarge the explosive and inherently dangerous character of said material.
29. Permitting loading of SS High Flyer with ammonium nitrate, knowing the harbor area at Texas City to be congested with industrial facilities with careless and reckless disregard for safety and protection of life and property.
30. Failure to give proper notice and warning of the inherently dangerous character of the material despite Defendant's knowledge from war experience. Charges that during 1942 or 1943 Defendant sought and received a memorandum setting forth characteristics of such material and how to control and use same.
31. Charges that on April 16,17, 1947, Defendant controlled, regulated, supervised, and governed the harbor area and had the nondelegable duty to establish and supervise regulations for safe and proper transportation, unloading storage, and stowing aboard ship of inherently dangerous material and Defendant failed to discharge such duty.

32. Failure to enforce and apply the provisions of Sec. 170, Title 46, USCA.
33. Failure to comply with Sec. 39,40 of Title 46, USCA, which Plaintiffs charge constitutes negligence as a matter of law.

Plaintiffs charge that if any of the above acts and omissions be less than negligence, they then charge each act to be a wrongful act or omission, and that each was committed within the scope of employment of each employee, servant, agent or representative of Defendant.

Paragraph IX. Plaintiffs allege damage and/or destruction as follows:

As a proximate result of the acts above, Plaintiffs have suffered damage to buildings, machinery, etc., making up the refinery property in the amount of \$784,653.43.

A special and direct and proximate loss of profits because of inability to perform their contracts, and special miscellaneous damages and start-up expenses to the extent of \$428,689.28. Loss of inventories of raw products, semi-processed products, etc., of the reasonable value of \$156,657.29.

Paragraph X. Plaintiffs sue in their own behalf and also for the use and benefit of their pledgees and cestui que trust insurers, Atlas Assurance Company, Ltd., and Hartford Fire Insurance Company.

Paragraph XI. Plaintiffs reserve rights to file claims against joint and/or several tort-feasors subject only to admiralty jurisdiction of the court.

2. Summary of Government's Answer:

On June 9, 1948, the Government's answer was filed by BRIAN S. ODEM, United States Attorney for the Southern District of Texas, and GEORGE O'BRIEN JOHN, Special Assistant to the Attorney General, which is summarized briefly as follows:

First defense: Plea for more definite statement.

Second defense: Motion to dismiss for failure to state a claim.

Third defense: Motion to dismiss on grounds of failure to show that the laws of the place where the alleged acts of negligence and omissions occurred would permit recovery, and failure to show where such acts occurred and identity of persons committing them.

Fourth defense: Motion to dismiss on grounds action brought in wrong district because Plaintiffs are not residents of this district and acts complained of did not occur in this district.

Fifth defense: Plaintiffs are not real parties in interest.

Sixth defense: Answer on Merits:

- I. Defendant is without knowledge to form a belief as to the truth of Paragraph I of the petition and therefore denies all allegations contained therein.
- II. Denial of all allegations of Paragraph II. Special denial that the Court has jurisdiction of this cause.
- III. Denial of all allegations in Paragraph III.
- IV. Denial of all allegations in Paragraph IV.
- V. General denial of all allegations of Paragraph V of petition. Specifically denies material loaded on SS Grandcamp was ammonium nitrate, that such material is inherently dangerous, and that rule of res ipsa loquitur is applicable.
- VI. General denial of all allegations in Paragraph VI.

VII. No answer required as to Paragraph VII; however, Defendant gives notice it will object to introduction of evidence as to any act or omission not specially pleaded.

VIII. General denial of all allegations of Paragraph VIII of petition.

IX. General denial as to Paragraph IX. Specific denial Plaintiffs were damaged in amount claimed.

X. Defendant denies capacity of Pan American Refining Company to sue as trustee for the use and benefit of its alleged pledges and cestui que trust insurers, Atlas Assurance Company, Ltd., and Hartford Fire Insurance Company.

XI. No answer required as to Paragraph XI of petition; however, Defendant waives no right to require Plaintiffs to assert each claim to recovery. Specifically denies Defendant is a tort-feasor subject to any jurisdiction, admiralty, or otherwise of this Court.

Seventh defense: Denial that acts of negligence or omissions on the part of Defendant's officers, agents, employees or servants occurred, but that if same did occur, such acts were performed while exercising due care; or in the alternative said claim is exempt from operation of the Federal Tort Claims Act because such acts were performed in exercise of discretionary functions or duties.

Eighth defense: Denial that any act of negligence or omission occurred, but if any such act did occur and constituted negligence, it was not the proximate cause of the alleged damage.

Ninth defense: Alleged damages were the result of unavoidable accident.

Tenth defense: Denial that any acts of negligence or omissions on the part of Defendant's officers, agents, etc., occurred but that if such acts did occur, they were not the proximate cause of the alleged injury. Alleges intervening acts of negligence on the part of others which were the direct, sole, exclusive and proximate cause of the fire and explosion aboard the SS Grandcamp and resulting damage, as follows:

A. Republic of France or the Compagnie Generale Transatlantique through their agents, employees, officers and servants:

1. Use of improper dunnage.
2. Failure to clean and inspect cargo holds.
3. Permitting loading without inspection.
4. Failure to require proper rebagging of broken sacks.
5. Failure to properly inspect loading operations.
6. Failure to enforce non-smoking regulations.
7. Failure to employ proper fire-fighting methods in Hold No. 4 of the SS Grandcamp.
8. Failure to maintain guards aboard said ship.
9. Failure to post "no smoking" signs in English.

B. A. D. Suderman Stevedoring Company, a partnership, employed by Agents of the Compagnie Generale Transatlantique:

1. Commencing loading operations before receiving a report from the Underwriter's inspector.
2. Permitting promiscuous smoking on the deck and in the hold of the SS Grandcamp by longshoremen.
3. Failure to enforce smoking regulations.
4. Permitting longshoremen to load broken bags of FGAN.
5. Failure to have broken bags of FGAN rebagged.
6. Permitting improper disposal of torn FGAN sacks.
7. Failure to employ proper fire-fighting methods in Hold No. 4 of the SS Grandcamp.

- 8. Directing use of steam instead of water to extinguish fire in Hold No. 4 of the SS Grandcamp.
- 9. Ordering No. 4 Hatch battened down, resulting in inordinate increase of temperature.

C. Members of International Longshoremen's Union, Local 636:

- 1. Promiscuous smoking on deck and in holds of said vessel.
- 2. Smoking aboard said vessel in violation of regulations including those promulgated by their national organization.
- 3. Improper disposal of paper bags and loose FGAN.
- 4. Failure to rebag broken sacks of FGAN.
- 5. Improper loading of broken sacks of FGAN.
- 6. Failure to apply a sufficient quantity of water in Hold No. 4.

D. Lykes Brothers Steamship Company, through its agents, officers, employees and servants with respect to the SS High Flyer:

- 1. Failure to remove the SS High Flyer from the danger zone.
- 2. Failure to maintain machinery of the SS High Flyer in proper working condition.
- 3. Failure to attempt repairs on the SS High Flyer upon discovery of fire aboard the SS Grandcamp.
- 4. Failure to employ tugs to move the SS High Flyer upon discovery of fire on the SS Grandcamp.
- 5. Failure to employ tugs to move the SS High Flyer after the explosion.
- 6. Permitting the SS High Flyer to be abandoned.
- 7. Failure to maintain personnel to man fire equipment.
- 8. Permitting fire to start after SS High Flyer abandoned.
- 9. Failure to reboard the SS High Flyer to extinguish fire.
- 10. Failure to move SS High Flyer after discovery of fire.
- 11. Failure to take precautions to prevent explosion of SS High Flyer.
- 12. Failure to exercise the administrative duty of Port Captain which by custom had been exercised by Lykes Brothers Steamship Company as to the general care and protection of the harbor area.

E. Texas City Terminal Railway Company with respect to fire and explosion aboard both ships.

1. Failure to enforce municipal ordinances.
2. Failure to enforce smoking regulations in warehouse and Pier "O".
3. Failure to maintain fire-fighting equipment and personnel.
4. Failure to maintain adequate guard system in dock area.
5. Failure to have fixed responsibility for administration of the port area.
6. Failure to effect the moving of the SS Grandcamp after discovery of the fire.
7. Failure to effect moving of the SS High Flyer.
8. Failure to warn individuals of the material and cargo aboard the SS High Flyer after the explosion on the SS Grandcamp.

F. Texas City, Texas - A Municipal Corporation, through its agents, officers, employees and servants with respect to both ships.

1. Failure to enforce governmental functions and authority over port and harbor facilities.
2. Failure to maintain a Captain of the Port.

The answer alleges that the above acts of negligence constituted new and independent causes which could not be reasonably foreseen by the Defendant and that even though the Defendant was guilty of acts of negligence, which is denied, such acts were not the direct or proximate cause of Plaintiff's damage but were remote acts totally unconnected with the acts of negligence of the parties alleged above.

Eleventh defense: Specific denials that: material loaded in hold of SS Grandcamp was ammonium nitrate; that it was inherently dangerous; that Defendant had any species of control over said material at time of explosions; and that the material was surplus military supplies.

P E N D I N G I N A C T I V E

LEADS

THE HOUSTON DIVISION

AT GALVESTON, TEXAS

Will follow and report action of the United States District Court in this matter. It will be noted that at the present time, it is believed this case will not be adjudicated prior to January, 1949. In the interim, this case is being placed in a pending inactive status.

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Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, F.B.I.

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FROM : SAC, HOUSTON

SUBJECT: (D) PAN AMERICAN REFINING CORP. -vs- US
CA 681, USDC, SDT
 FTCA

DATE: May 19, 1951

*Go to it**PMX-1*

In this Civil Action, the PAN AMERICAN REFINING CORPORATION has brought suit for property damages and loss of profits in the amount of \$1,370,000.00 as a result of the Texas City Explosion.

The PAN AMERICAN REFINING CORPORATION operates a refining plant in the city of Texas City, Texas. However, the headquarters of the PAN AMERICAN REFINING CORPORATION is not located in Texas City, Texas; but has its main office located in New York City.

The Bureau is requested to obtain from the Bureau of Internal Revenue, Washington, D. C., Income Tax Returns for the years 1945 through 1949.

120-88

RLW/mw

*letter to the
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PLS

December 20, 1951

Honorable Brian S. Odem
United States Attorney
Post Office Building
Houston, Texas

①
Re: Pan American Refining Corporation et al
-vs- United States, Civil Action 681,
United States District Court, Southern
District of Texas; Federal Tort Claims
Act.

Dear Mr. Odem:

Enclosed herewith is a ^{NR} report by Special Agent William P. Conley (A) dated December 20, 1951, at Houston. You were previously furnished reports on this suit on November 20, 1951, and July 3, 1948.

120-305-4

This is to advise that no further investigation is contemplated in this case unless advised by you.

In the event you desire additional investigation, please communicate with me.

Very truly yours,

A. F. Lorton, Jr.
Special Agent in Charge

Enclosure
WPC:tel
120-88
cc: Director

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